

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 July 2024

DOCKET NUMBER: AR20230013035

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable
- a video/telephonic appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Diploma, U.S. Army, Medical Noncommissioned Officer (NCO) Course, dated 19 December 1986
- Certificate of Commendation, Government of the District of Columbia (D.C.), Department of Human Services (DHS), dated 19 July 1991
- Letter of Recommendation, Government of D.C., DHS, dated 12 November 1992
- Certificate of Appreciation, Government of D.C., dated 13 November 1992
- License to Preach, African Methodist Episcopal Church (4), dated 24 March 2013 to 6 November 2022
- Certificate, State of Alabama, Department of Mental Health, Recovery support Specialist, dated 26 February 2021
- Certificate of Appreciation, R.O.S.S., dated 5 August 2021
- Evangelist Certificate, African Methodist Episcopal Church, dated 8 September 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states due to the majority of his honorable and dedicated service, he would like an upgrade. After returning from the field, he discovered his wife had an affair with another NCO who was diagnosed with human immunodeficiency virus (HIV). HIV was a death sentence during that time. He was discharged without receiving mental

health treatment. The discharge changed his whole life. He was traumatized to the point he tried to kill himself. Prior to this issue, he was in good standing as an instructor at Fort Sam Houston. He dreams about this issue, and it will not go away. He notes post-traumatic stress disorder (PTSD) and other mental health as conditions related to his request.

3. The applicant enlisted in the Regular Army on 30 October 1974.
4. A Report of Serious/Sensitive Incident and supporting documents show that on the morning of 6 August 1987, the applicant forced his wife's vehicle from the road and proceeded to beat her in the head with a brick. He left her lying on the road and returned to his vehicle. Captain (CPT) S.W. arrived and rendered first aid. After getting into his car, the applicant ran over his wife with his vehicle, striking CPT S.W. as well. He left the scene of the accident. Approximately one hour later, he arrived back at the scene. He was apprehended by the San Antonio Police and charged with two counts of attempted homicide. Both victims were treated at the hospital for injuries sustained during the incident.
5. Two DA Forms 4187 (Personnel Action) show the applicant was confined by civil authorities on 6 August 1987 and returned to duty on 14 August 1987.
6. The applicant was seen at the hospital on 15 August 1987. He related one to two months of marital mistrust and separation, and further stated he became overwhelmed. Immediately after the incident on 6 August 1987, he returned to his apartment and cut his wrist (through the tendons), became afraid of the blood, and turned himself in. He was admitted to the hospital for observation and returned to duty on 18 August 1987.
7. The applicant's commander initiated a Bar to Reenlistment on 15 September 1987. The commander noted the applicant had undergone budget counseling, he and his spouse had numerous letters of indebtedness, and he had engaged in a pattern of conduct discreditable in nature with both civilian and military authorities. In a statement in his own behalf, the applicant stated he began to have problems with his wife. Their failure to communicate caused things to go undone. He arranged to pay off his bad checks and filed a "Chapter 7" to start fresh. The Bar to Reenlistment was subsequently endorsed by the intermediate chain of command.
8. On 1 October 1987, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14-12c. As specific reasons for the separation action, the commander stated the applicant committed a series of offenses and the circumstances leading to those offenses warranted separation. The applicant committed multiple aggravated assaults

upon his wife and an aggravated assault upon a commissioned officer, CPT S.W. The commander further recommended an UOTHC discharge.

9. The applicant consulted with counsel on 15 October 1987. He was advised of the basis for the contemplated separation action and its effects; the rights available to him; and the effect of waiving his rights. He requested consideration of his case by an administrative separation board, a personal appearance before the board, and representation by consulting counsel. He acknowledged understanding that he may be ineligible for many or all benefits as a Veteran under Federal and State laws, and he could expect to encounter substantial prejudice in civilian life as a result of the issuance of an UOTHC discharge. He elected not to submit a statement in his own behalf.

10. On 16 October 1987, the applicant's immediate commander formally recommended his separation from service, prior to the expiration of his term of service, under the provisions of AR 635-200, Chapter 14, with the issuance of a UOTHC discharge. On that same date, the intermediate commander reviewed and concurred with the recommendation.

11. The applicant underwent a mental status evaluation on 19 October 1987. The evaluating provider deemed the applicant mentally responsible and determined he had the mental capacity to understand and participate in administrative proceedings.

12. On that same date, the applicant underwent a medical examination. The relevant Standard Form (SF) 93 (Report of Medical History) and corresponding SF 88 (Report of Medical Examination) show the applicant reported being in good health, except for the weakness in wrist. The examining provider determined the applicant was physically qualified for separation.

13. The applicant was formally counseled, on 26 October 1987, for his inability to manage his financial affairs. He was also notified of his Bar to Reenlistment, which was finally approved on 23 October 1987.

14. On 28 October 1987, the applicant's brigade commander concurred with the recommended separation action and UOTHC discharge and requested a board of officers be convened to hear the applicant's case.

15. The recommendation and request were further endorsed by the Commandant, Academy of Health Sciences, Fort Sam Houston, who referred the applicant's case to a board of officers on 1 December 1987.

16. Nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, was imposed against the applicant on 10 December 1987, for assaulting an individual by striking him on the face, on or about 22 October 1987. His

punishment consisted of reduction to specialist/E-4 and forfeiture of \$509.00 pay. The applicant appealed the punishment, resulting in the portion of the punishment extending to reduction to specialist/E-4 being suspended until 9 June 1988, at which time, unless the suspension was sooner vacated, the reduction would be remitted without further action.

17. A Board of Officers was scheduled for 22 January 1988. The applicant refused to acknowledge the notification prior to consulting with trial defense. The board was later rescheduled.

18. The Board of Officers met on 23 February 1988 to determine if the applicant should be eliminated from service. The board determined [the applicant] did commit the alleged misconduct and was undesirable for further retention. The board recommended he be discharged from military service with a UOTHC discharge.

19. In response to the board determination, defense counsel submitted a memorandum to the separation authority on 29 February 1988, wherein counsel stated [the applicant] was awaiting trial in civilian court for the same misconduct which brought him to the board. He had not been found guilty yet. Because he was still pending criminal charges, he could not testify or participate in his own defense. Testimony of witnesses established [the applicant] as an exceptional Soldier, and he had 13 years of distinguished service in the Army. Counsel requested that the separation authority not approve a UOTHC discharge, or in the alternative, suspend the discharge until [the applicant] had an opportunity to clear himself of the charges.

20. The administrative separation action and report of the board of officers was determined to be legally sufficient by the Command Judge Advocate, who further recommended that the findings and recommendation of the board should be approved, and the applicant should be discharged UOTHC.

21. On 3 March 1988, the separation authority approved the recommended discharge, directed the applicant be reduced to the rank of private/E-1, and the issuance of a UOTHC discharge.

22. The applicant was discharged accordingly on 8 March 1988, under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct – commission of a serious offense. His DD Form 214 confirms his service was characterized as UOTHC, with separation code JKQ and reenlistment code RE-4. He was credited with 10 years, 1 month, and 15 days of active service, with 3 years, 2 months, and 16 days of prior active service, and lost time from 6 August 1987 to 13 August 1987. He was awarded or authorized the:

- Army Service Ribbon

- Overseas Service Ribbon (2nd award)
- NCO Professional Development Ribbon
- Army Achievement Medal
- Army Good Conduct Medal (4th award)
- Expert Marksmanship Qualification Badge with Rifle bar (M-16)

23. The Army Discharge Review Board (ADRB) reviewed the applicant's request for an upgrade of his UOTHC characterization of service on 28 October 1993. After careful consideration, the Board denied the applicant's request.

24. The applicant provides the following:

a. A copy of his diploma from the U.S. Army, Academy of Health Sciences, which shows he successfully completed the Medical NCO Course on 19 December 1986.

b. A Certificate of Commendation dated 19 July 1991, and a letter of recommendation, dated 12 November 1992, show the applicant had an excellent performance rating while employed at DHS, Washington D.C. His supervisor noted he was a responsible, reliable employee, whose enthusiasm, cheerfulness, motivation, and willingness to get the job done should be applauded. An additional Certificate of Appreciation was awarded to him, on 13 November 1992, for his participation in the citywide immunization campaign.

c. Four certificates, dated 24 March 2013 through 6 November 2022, show he was licensed to preach at the African Methodist Episcopal Church. An additional certificate, dated 8 September 2023, certified him as an Appointed Evangelist.

d. A certificate from the State of Alabama Department of Mental Health, dated 26 February 2021, shows he is a certified Recovery Support Specialist. An additional certificate, dated 5 August 2021, was awarded to him in appreciation of his initiative in working with peers during their journey in recovery.

25. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 14, by reason of misconduct, an UOTHC characterization of service is normally appropriate. However, the separation authority may direct a general discharge if merited by the Soldier's overall record.

26. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

## 27. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced Posttraumatic Stress Disorder (PTSD) and Other Mental Health Issues that mitigates his misconduct. More specifically, the applicant asserts that his misconduct was due to finding out his wife had an affair with another noncommissioned officer (NCO) who was diagnosed with HIV/AIDS which the applicant described as 'a death sentence during this time in 1988.' The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted in the Regular Army (RA) on 30 October 1974 and re-enlisted four times. The highest rank he achieved was E-5.
- A Report of Serious/Sensitive Incident and supporting documents show that on 06 August 1987 the applicant forced his wife's vehicle from the road and proceeded to beat her in the head with a brick. He left her lying on the road and returned to his vehicle. A commissioned officer arrived and rendered first aid. After getting into his car, the applicant ran over his wife and also struck the officer. He left the scene of the accident. Approximately one hour later, he arrived back at the scene. He was apprehended by the San Antonio Police and charged with two counts of attempted homicide. The applicant was confined by civil authorities on 06 August 1987 and returned to duty on 14 August 1987.
- The applicant presented to the hospital on 15 August 1987 reporting one to two months of marital mistrust and separation. Following the incident on 06 August 1987, the applicant returned to his apartment, cut his wrists, and turned himself in. He was admitted to the hospital for observation and returned to duty on 18 August 1987.
- The applicant's commander initiated a Bar to Reenlistment on 15 September 1987 due to numerous letters of indebtedness and engaging in a pattern of conduct discreditable in nature with both civilian and military authorities.
- The applicant's commander notified the applicant of his intent to initiate separation on 01 October 1987 under the provisions of Army Regulation (AR) 635-200, Chapter 14, paragraph 14-12c. The specific reasons for separation were noted as a series of offenses and the circumstances leading to those offenses warranted separation. The applicant committed multiple aggravated assaults upon his wife and an aggravated assault upon a commissioned officer.
- The applicant received nonjudicial punishment under the provisions of Article 15 were imposed against the applicant on 10 December 1987 for assaulting an individual by striking him on the face on or about 22 October 1987.
- The applicant was discharged on 08 March 1988 under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct-commission of a serious

offense. The applicant had several achievements during his service, most notably an Army Achievement Medal and four Army Good Conduct Medals.

- The Army Discharge Review Board (ADRB) reviewed the applicant's request for an upgrade on 28 October 1993. The Board denied the applicant's request.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. Review of an in-service medical record dated 14 August 1987 documented that the applicant endorsed hearing voices 'telling him to kill/hurt his wife' the day of the incident but denied experiencing auditory hallucinations at any other time. He was diagnosed with Adjustment Disorder with Mixed Emotional Features and due to his impulsivity and pending charges inpatient hospitalization for observation was recommended. The applicant underwent a Mental Status Evaluation on 19 October 1987. It was documented that the applicant had the mental capacity to understand and participate in proceedings and was mentally responsible. A Report of Medical History dated 19 October 1987 documented that the applicant stated he was in 'good' health with the exception of wrist weakness. It was documented that the applicant reported experiencing depression and worry from April to August 1987 and was treated for depression from 16-21 August 1987. There were no other military medical records available for review.

d. A review of JLV was void of medical information. Of note, the applicant's UOTHC discharge renders him ineligible for VA services.

e. The applicant is applying to the ABCMR requesting an upgrade of his UOTHC characterization of service. He contends he experienced PTSD and Other Mental Health Issues that mitigates his misconduct. Review of the applicant's military medical record submitted as part of his application indicates he was diagnosed with Adjustment Disorder with Mixed Emotional Features in August 1987, after the date of the alleged incident. It was also documented that the applicant reported feeling depressed from April-August 1987 during a physical exam and was treated for depression in August 1987. There is no other documentation available regarding the applicant's BH history.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with Adjustment Disorder with Mixed Emotional Features in-service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with Adjustment Disorder with Mixed Features in-service.

(3) Does the condition experience actually excuse or mitigate the discharge? No. The applicant was diagnosed with Adjustment Disorder with Mixed Emotional Features in-service. Although it was noted that the applicant endorsed hearing voices telling him to kill his wife the day of the incident, the evaluating provider did not document any psychotic processes or diagnoses. Furthermore, the applicant was administratively cleared for separation on 19 October 1987 during a Mental Status Examination and no diagnosis was rendered at that time. Adjustment Disorder with Mixed Features does not interfere with one's ability to distinguish right from wrong. Furthermore, even if the applicant presumably met criteria for a condition that did interfere with one's judgment, due to the seriousness of the misconduct that led to the applicant's discharge, the misconduct outweighs the relief offered by Liberal Guidance. As such, BH mitigation is not supported.

g. Regarding his assertion of PTSD, while there is no evidence to support this diagnosis in-service, the applicant's self-assertion alone merits consideration by the Board.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct with the commander citing multiple aggravated assaults upon his wife and an aggravated assault upon a commissioned officer. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant's diagnosis of adjustment disorder; however, reviewed and concurred with the medical advisor's review finding mitigation is not supported based on the egregiousness of the misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate. The Board noted and concurred with the analyst of record's administrative notes provided below.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.



BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 8 March 1988, is void entries that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 19780116 UNTIL 19850513

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.
4. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
  - a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.
  - b. Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
  - c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to

succeed. A UOTHC discharge was normally considered appropriate. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//